

EA7ARIOCs

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

-----x

3 RIO TINTO PLC,
4 Plaintiff,

5 v.

14-cv-3042 (AJP)

6 VALE, S.A., et al.,
7 Defendants.

-----x

8 New York, N.Y.
9 October 7, 2014
10 2:20 p.m.

11 Before:

HON. ANDREW J. PECK

Magistrate Judge

12 APPEARANCES

13 QUINN EMANUEL URQUHART & SULLIVAN, LLP
14 Attorneys for Plaintiff

15 BY: MICHAEL J. LYLE, ESQ.
16 ERIC C. LYTTLE, ESQ.

17 CLEARY GOTTlieb STEEN & HAMILTON LLP
18 Attorneys for Defendant Vale, S.A.

19 BY: LEWIS J. LIMAN, ESQ.

20 MISHCON DE REYA NEW YORK, LLP
21 Attorneys for Defendants BSG Resources Limited
22 and Benjamin Steinmetz

23 BY: VINCENT FILARDO, ESQ.
24 ELIZABETH ROTENBERG-SCHWARTZ, ESQ.
25 KAVITHA S. SIVASHANKER, ESQ.

26 LAW OFFICES OF MARTIN J. AUERBACH, ESQ.
27 Attorneys for Defendants BSG Resources (Guinea) Ltd.,
28 BSGR Guinea Ltd. BVI, BSG Resources Guinee SARL,
29 Frederic Cilins, Michael Noy, Avraham Lev Ran,
30 and Mamadie Toure

31 BY: MARTIN J. AUERBACH, ESQ.

32 SULLIVAN & WORCESTER LLP
33 Attorneys for Defendant Mahmoud Thiam

34 BY: PAUL E. SUMMIT, ESQ.
35 KAREN E. ABRAVANEL, ESQ.

1 (In open court)

2 THE COURT: On the record.

3 I got a status report letter from Mr. Lyle yesterday,
4 or within the last day or two anyway. On the one hand, I am
5 happy to hear that you are all continuing to negotiate in good
6 faith. I am a little worried that things are going slower than
7 I would like. And I don't know if I would need to give you a
8 deadline that says, unless the stay motion -- which I saw came
9 in last night but I haven't looked at it yet, and obviously
10 there hasn't been a response, etc. I hope that everyone is
11 moving as promptly as they can and are not dragging feet in
12 order to keep discovery going slowly while the Court decides
13 whether to stay it.

14 With that, it doesn't sound like you have any disputes
15 that you want me to deal with per se, but let me hear from you.
16 Mr. Lyle, you can start and we'll see what everyone has to say.

17 MR. LYLE: Thank you, your Honor. As the Court has
18 noted, we are making progress as we indicated in our letter.
19 We do have a number of issues which we also identified that
20 could come to a head. We think it's going to be within the
21 next period of -- the next round, probably after we've had a
22 discussion further with both -- with each of the defendants.
23 Mr. Lyle has been handling those negotiations with Mr. Liman
24 and others on the defense side.

25 And with respect to the idea of a date, we think it

1 might make some sense, your Honor, so that we can keep moving
2 forward with discovery, we do think that there are topics
3 which, as we indicated in our letter, such as agreed-on search
4 terms, identification of custodians, and the topics that we've
5 referenced in our joint letter that we submitted, those things
6 can begin relatively soon. We are still talking about that,
7 but if I had to guess, my sense is, based on what I'm hearing
8 from Mr. Lyle, we may need to turn to you for assistance on
9 that. So a date in the short term might be a good idea from
10 our perspective to keep things moving along.

11 THE COURT: All right. We'll see what short-term
12 dates are available and what exactly you mean by "the short
13 term." But on the defense side, Mr. Liman?

14 MR. LIMAN: Your Honor, I agree with much of what
15 Mr. Lyle has said. Just to give your Honor a sense of where we
16 stand, we completed our first set of meet-and-confers with the
17 plaintiff yesterday. Where things stand is we focused on the
18 scope of the document requests. We do anticipate there will be
19 some disagreements. There are some areas where the plaintiffs
20 owe us some information to narrow the request. There are some
21 areas where we owe them a proposal. After that is completed,
22 what we anticipate doing is meting and conferring with respect
23 to custodians where that can be done and having a discussion
24 either about predictive coding or search terms and what search
25 terms should be used.

1 So we're making progress.

2 THE COURT: On most of the documents -- because I know
3 one of the complaints, or one of the concerns, was how far back
4 some of this goes -- is whatever is going to be produced likely
5 to be electronically stored or is there a great deal of paper,
6 or don't you know yet?

7 MR. LIMAN: I don't know the answer to that, your
8 Honor. And I think some of that probably depends upon the
9 narrowing of the scope of the request. I think it is fair to
10 say that, regardless of where the majority of the documents
11 lie, it will be a substantial quantity of documents that will
12 be electronic.

13 THE COURT: All right. Just because, even if you scan
14 paper documents in, predictive coding probably will not work
15 nearly as well on the scanned documents, which will therefore
16 be lacking a lot of metadata, as it would if we're dealing
17 largely with ESI. It may be you have to use different methods
18 for the type of material. But OK.

19 All right. Other defense counsel has anything to add?

20 MR. FILARDO: Your Honor, we're in the process of
21 responding in writing to the letter that we just received on
22 October 1st from plaintiff. We're still in the early process
23 of the meet and confer, hoping to get to an agreement on what
24 the proper scope will be for jurisdictional discovery. I think
25 we have a disagreement as to that issue.

1 THE COURT: Well, sooner rather than later.

2 MR. FILARDO: Yes. So we're hoping to resolve it out
3 the Court's intervention.

4 THE COURT: OK. So when do you think it makes sense
5 to come back? On the one hand, you're much better off working
6 things out to the extent you can, particularly -- and I do
7 throw this out; I'm sure you would have thought of it on your
8 own -- and that is doing stages of discovery. So if you are
9 able to agree that X is within the scope but you disagree as to
10 whether one should go back to do Y as well, get X going and
11 worry about Y later. And I will certainly give a longer
12 discovery period when we finally get to put a real date on
13 this. If you are doing that amicably in an effort to save
14 time, money, etc., then it keeps us from going too slowly.

15 So with all of that, why don't the two of you talk for
16 a minute on a date idea. My schedule is incredibly tight in
17 the October, November period, but I can always squeeze you in
18 at some ungodly hour of the morning or something. Talk for a
19 minute amongst the three of you. Or four, whoever. And then
20 tell me what you want and we'll see what works.

21 MR. LYLE: Thank you, your Honor.

22 (Counsel confer)

23 MR. LYLE: Thank you, your Honor. We just conferred,
24 as the Court requested. We think some time the week of
25 November 3rd, if that's convenient for your Honor, we could be

1 available.

2 THE COURT: OK. We could do it Monday the 3rd or, if
3 you want to do it the -- Halloween the 31st, the Friday before,
4 I could work you in there. Rest of the week of November 3rd is
5 the Sedona conference meeting where I will be instead of here.
6 So if Monday the 3rd works for you in the morning.

7 MR. LYLE: If the afternoon is available. If not, OK.
8 We can be here.

9 THE COURT: OK. 9:30 on the 3rd. November 3 at 9:30.
10 To the extent that means you have to fly up the night before, I
11 apologize, but I'll be flying out.

12 MR. LYLE: We'll stop here for a night in New York,
13 your Honor, happily. Thank you.

14 MR. LIMAN: Your Honor, would you like the same joint
15 submission on a Thursday, at the end of the day?

16 THE COURT: Yes. That would be great.

17 And think about -- I don't think you need it yet, but
18 particularly on e-discovery issues, think about whether you
19 want a special master to serve as more of a mediator. If it's
20 disputes and you want a ruling, I can handle that. If you
21 think that your negotiations would be improved when you get
22 into ESI nitty-gritty by having somebody who speaks
23 computerese, so to speak, helping you all out, then if you all
24 can agree on somebody that's fine. If not, if you want me to
25 suggest somebody who can do that. If you think you can do all

EA7ARIOCs

1 it on your own -- I know a lot of the firms have in-house,
2 either at the client or at the law firm, e-discovery
3 specialists. But make sure whatever deals you cut are smart
4 ones. And if you want help in that, obviously you have to pay
5 for that sort of help, but it is available.

6 All right. See you on the 3rd.

7 MR. LIMAN: Thank you, your Honor.

8 MR. LYLE: Thank you, your Honor.

9 o0o